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James A. Johnston

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EXAMINER

GOTTSCHALK, MARTIN A

ART UNIT

PAPER NUMBER

3694

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/879,993		JOHNSON ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Martin A. Gottschalk		3694	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ~~3~~ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Notice to Applicant***

1. Claims 1-29 are pending. Claims 1, 8, 14, and 19 are amended.

### ***Claim Objections***

2. The changes to the amended claims are shown properly in Applicants listing of the claims in that they are not underlined.

### ***Continued Examination Under 37 CFR 1.114***

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/15/2007 has been entered.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or
- (2) a patent granted on an application for patent by another filed in the United States before

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the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-5, 7-17, and 19-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Taylor et al (US Pat# 6,209,004, hereinafter Taylor).

A. As per claim 1, Taylor discloses a patient evaluation apparatus (Taylor: col 9, lns 56-62; cols 13-16, sections VII to X), comprising:

(a) a configuration module including a configuration database of form data for a medical evaluation form (Taylor: col 4, lns 11-13; Fig 4, Block 2);

(b) a dynamic generator to create a marked up document based upon the form data (Taylor: col 8, lns 21-22 and 34-37; Fig 4, Block 7)

wherein the dynamic generator is adapted to perform data display and configuration (The Examiner notes that these added features are extremely well known to the artisan having the most ordinary skill in the art and are exemplified by Taylor: col 7, lns 5-8; col 18, lns 25-63);

and

(c) a transmitting module to

combine the marked up document with medical data of a patient  
(Taylor: col 8, Ins 20-28 and 34-37; Fig 4, Blocks 2-4 and 7) and

transmitting the combined marked up document through a  
transmission channel (Taylor: col 8, Ins 29-33, Fig 4, Block 5), such that a  
user having a browser is capable of receiving and displaying the combined  
marked up document (Taylor: col 5, Ins 17-22, note the use of the Internet;  
also Ins 31-37, note the exemplary use of Microsoft Word which generates  
files of many different formats including Word format and HTML format.).

B. As per claim 2, Taylor discloses the patient evaluation apparatus of claim  
1, further comprising

a patient data object to store the medical data, the medical data being  
entered by the user in the received combined marked up document (Taylor: col  
7, Ins 49-55; Fig 2, Block 19).

C. As per claim 3, Taylor discloses the patient evaluation apparatus of claim  
2, wherein

the patient evaluation apparatus performs a search for the medical data in  
a patient database and stores found patient's records in the patient data object  
(Taylor: col 3, Ins 54-59; col 7, Ins 55-58; Fig 2, Block 20; ).

D. As per claim 4, Taylor discloses the patient evaluation apparatus of claim 3, wherein

the user may alter medical data stored in the patient data object by entering different medical data over the medical data combined in the combined received marked up document (Taylor: col 4, lns 38-45, reads on "...existing data item in a document is edited...").

E. As per claim 5, Taylor discloses the patient evaluation apparatus of claim 1, wherein

the configuration module checks the configuration database to determine whether the configuration database has changed, and upon a change of the configuration database the configuration module causes the dynamic generator to re-create the marked up document (Taylor: col 4, lns 5-17, reads on "...automatic regeneration of all Dependent documents..."; see also lns 22-24).

F. As per claim 7, Taylor discloses the patient evaluation apparatus of claim 1, further comprising:

an authorization module to determine whether the user is permitted to view a received combined marked up document (Taylor: col 4, lns 17-22).

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G. As per claim 8, Taylor discloses patient evaluation method, comprising:

dynamically creating a marked up document based on a configuration database, with the configuration database including form data for medical evaluation forms (rejected as per the steps of claim 1a and 1b above);

performing data display to visually represent the data;

performing data configuration to programmatically create information (The Examiner notes that these last two steps features are extremely well known to the artisan having the most ordinary skill in the art and are exemplified by Taylor: col 7, lns 5-8; col 18, lns 25-63);

combining the marked up document with medical data of a patient (rejected as per the step of claim 1c above; also Fig 2, Blocks 12 to 14); and

transmitting the combined marked up document through a transmission channel to a user having a browser capable of receiving and displaying the received marked up document (rejected as per the step of claim 1c above; see also Taylor: col 18, lns 37-41).

H. As per claim 9, Taylor discloses the patient evaluation method of claim 8, further comprising

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monitoring for a user alteration of the medical data in the received marked up document (rejected as per claim 4 above).

I. As per claim 10, Taylor discloses the patient evaluation method of claim 9, wherein

the user altered medical data is caused to replace the medical data in a patient database that stored the medical data (rejected as per claim 4 above).

J. As per claim 11, Taylor discloses the patient evaluation method of claim 8, further comprising

storing a user alteration of the medical data in the received marked up document (rejected as per claim 4 above. The Examiner considers an "update" to include storage of altered data) and

storing the alteration of medical data in a patient database if it is determined that a break in the transmission channel to the user has occurred (rejected as per claim 4 above. The Examiner considers an "update" to include storage. See also col 18, lns 37-41. The Examiner considers the end of the addition of altered data to be a form of break in the transmission, which would be followed by storage of the data).



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K. As per claim 12, Taylor discloses the patient evaluation method of claim 8, further comprising

storing a user alteration of the medical data in the received marked up document (rejected as per claim 4 above. The Examiner considers an “update” to include storage of altered data), and

upon an end of session request by the user the altered medical data is caused to replace the medical data in a patient database that stored the medical data (Taylor: col 3, lns 57-59; Fig 1, Block 8. The Examiner notes that a user would select Enter on the keyboard after entering data in “word processor templates”, and considers this to be a form of end of session request that replaces the old data, the session being considered to be the steps of the data alteration/entry process prior to selecting Enter).

L. As per claim 13, Taylor discloses the patient evaluation method of claim 8, further comprising

storing a user alteration of the medical data in the received marked up document (rejected as per claim 4 above. The Examiner considers an “update” to include storage of altered data), and

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upon a cancel request by the user the altered medical data is deleted (Taylor: col 3, Ins 57-59; Fig 1, Block 8. The Examiner notes that a user might elect to not save the data after entering data in "word processor templates", and considers this to be a form of cancel request that deletes the entered data).

M. As per claim 14, Taylor discloses a patient evaluation method, comprising:

dynamically creating a marked up document based on a configuration database, with the configuration database including form data for medical evaluation forms (rejected as per the steps of claim 1a and 1b above);

performing data display to visually represent the data;

performing data configuration to programmatically create information (The Examiner notes that these last two steps features are extremely well known to the artisan having the most ordinary skill in the art and are exemplified by Taylor: col 7, Ins 5-8; col 18, Ins 25-63);

transmitting the marked up document through a transmission channel to a user having a browser capable of receiving and displaying the received marked up document (rejected as per the step of claim 1c above);

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monitoring for a user addition of medical data to the received marked up document (rejected as per claim 4 above. The Examiner considers an “update” to include monitoring for addition of new data.);

storing the medical data (rejected as per claim 4 above. The Examiner considers an “update” to include storage of data); and

transmitting a combination of the stored medical data and the marked up document through the transmission channel to the user (rejected as per the step of claim 1c above).

N. As per claim 15, Taylor discloses the patient evaluation method of claim 14, wherein the stored medical data is

stored in a patient database upon a determination that the medical data is sufficiently unique to identify a patient corresponding to the stored medical data (Taylor: col 16, lns 43-45. The Examiner considers that the referenced analysis includes a form of determination of uniqueness.).

O. As per claim 16, Taylor discloses the patient evaluation method of claim 15, wherein

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if the medical data is not sufficiently unique (Taylor: col 2, Ins 30-34, reads on "Enforcement of Format and Content Requirements") then sending an error message to the user indicating that additional medical data is necessary (Taylor: col 4, Ins 29-37. The Examiner considers "error checking" to include sending an error message.).

P. As per claim 17, Taylor discloses the patient evaluation method of claim 14, further comprising

determining whether the user is authorized to receive the marked up document (rejected as per claim 7 above).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor as applied to claim 1 above, and further in view of Myers et al (US Pat# 2002/0004806, hereinafter Myers).

A. As per claims 6 and 18, Taylor discloses the patient evaluation apparatus of claim 1, wherein the transmission channel is

an Internet or Intranet channel (Taylor: col 5, lns 17-22, note the use of the Internet, in particular the effect of the referenced invention to improve transfer over the Internet and within Intranets.).

The teachings of Taylor fail to explicitly disclose the marked up document is a HTML/ASP document.

However this feature is well known in the art as evidenced by the teachings of Myers (Myers: [0025]).

It would have been obvious to one of ordinary skill at the time of the invention to incorporate the teachings of Myers within the system of Taylor with the motivation of providing automated formatting of documents (Myers: Abstract)

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and improving system security by restricting the use of "cookies" which might contain computer viruses (Myers: [0005]-[0006]).

9. As per claims 19-24 and 25-29, they are claims directed to a "readable medium for use in a computational device" which repeats the same limitations of claims 8-13 and 14-18 respectively, the corresponding method claims, as collections of instructions stored on readable media for use in a computational device, as opposed to a series of process steps. Since the teachings of Taylor and Myers disclose the underlying process steps that constitute the method of claims 8-13 and 14-18, it is respectfully submitted that they likewise disclose the instructions that cause the computational device to perform the steps as well. As such, the limitations of claims 19-24 and 25-29 are rejected for the same reasons given above for claims 8-13 and 14-18.

### ***Response to Arguments***

10. Applicant's arguments in the response filed 06/15/2007 have been fully considered but they are not persuasive. On pg 10 of the response, Applicant appears to argue that the unique feature of his invention is that the claimed "dynamic generator...provides a graphic user interface (GUI) function to the system," and that this feature is not taught by the prior art. In response, the Examiner respectfully disagrees, and refers the Applicant to the citations provided from the Taylor reference above, for example for claims 1, 8, and 14.

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**Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Martin A. Gottschalk whose telephone number is (571) 272-7030. The examiner can normally be reached on Mon - Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



MG  
06/17/2007



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PRIMARY EXAMINER